

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION**

<b>JOHNNY POTTS and JANICE POTTS,</b>	§	
<b>Plaintiffs,</b>	§	
<b>v.</b>	§	<b>Civil Action No.</b>
		<b>3:06-cv-00124-WHA-CSC</b>
<b>DYNCORP INTERNATIONAL LLC,</b>	§	
<b>JAMES McCANTS, et al.,</b>	§	
<b>Defendants.</b>	§	

**MOTION TO DISMISS DEFENDANT JAMES McCANTS**

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COMES NOW defendant James McCants and, pursuant to Rules 12(b)(2) & (5) of the Federal Rules of Civil Procedure, moves the Court to dismiss him from this action on the grounds of lack of personal jurisdiction and insufficiency of service of process. As support for its motion, defendant would show unto the Court as follows:

**LACK OF PERSONAL JURISDICTION**

1. This case is a diversity action filed in this Court pursuant to 28 U.S.C. § 1332(a)(1). The complaint asserts that the plaintiffs are resident citizens of Alabama (Complaint ¶ 1), and that this defendant, James McCants, is a resident citizen of Georgia, (Complaint ¶ 3). The complaint does not assert any basis for the Court to assert personal jurisdiction over James McCants.

2. The automobile accident made the basis of this action occurred in the nation of Iraq. (Complaint ¶ 11). Consequently, no allegedly tortious act or omission occurred within the State of Alabama.

3. McCants is a resident of Atlanta, Georgia. McCants does not own real property in the State of Alabama. McCants does not live in Alabama. McCants is not employed within the State of Alabama and does not otherwise derive substantial revenue from within the State of Alabama. McCants has not otherwise subjected himself to the general or specific jurisdiction of the courts of Alabama. Consequently, this Court does not have personal jurisdiction over James McCants, and he is due to be dismissed from the action.

#### **INSUFFICIENCY OF SERVICE OF PROCESS**

4. Plaintiffs apparently attempted to effect out-of-state service of process upon McCants through certified mail under Rule 4.2 of the Alabama Rules of Civil Procedure, as allowed by Rule 4(e)(1) of the Federal Rules of Civil Procedure.

5. The return receipt for the process purportedly to be served upon Mr. McCants does not state that it is for restricted delivery as required by ARCP Rule 4.2(b)(1)(A).

6. The mail carrier did not deliver the envelope containing the process to Mr. McCants. Mr. McCants did not sign the return receipt. The mail carrier left the envelope containing the process at the management office of the apartment complex where Mr. McCants resided at the time. An individual in the management office signed the return receipt. Mr. McCants was later notified that he had mail at the apartment complex

management office, and he went to the office and retrieved the envelope containing the process.

7. Under the foregoing facts, Mr. McCants was not properly served with process according to the law of Alabama, as the state where the district court is located, or the law of Georgia, where service was attempted to be effected. Accordingly, service of process upon Mr. McCants was insufficient under FRCP 4(e), and he is due to be dismissed from the action.

WHEREFORE, defendant James McCants prays that the Court would dismiss the complaint against him on the grounds of lack of personal jurisdiction and insufficiency of service of process.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 8th, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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Respectfully submitted,

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